

March 31, 2011

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th St. SW
Washington, DC 20554

RE: Notice of *Ex Parte* presentation in:

MB Docket No. 10-235

Dear Ms. Dortch:

On March 31, 2011, Harold Feld, Legal Director, Public Knowledge (PK), met with Joshua Cinelli, Media Advisor to Commissioner Copps, and then separately with Amy Levine, Advisor to Chairman Genachowski, with regard to the above captioned matter.

In response to the position in filed comments that the FCC lacks authority to mandate a particular receiver antenna type, PK suggested that the Commission could achieve the same effect through its direct regulation of the 301 licensee and definition of “harmful interference” pursuant to its Section 303 and 309(h) authority rather than via direct regulation of receiver manufacturers. In the broadcast service in particular, the definition of “harmful interference” has long rested with the commission. The adoption of the current spacing rules, standardized protected contour, and market definition are all functions of Commission rule and do not correspond to the reality on the ground for reception. Instead, they represent general approximations by the Commission explicitly balancing numerous factors that include non-engineering as well as engineering concerns.

Accordingly, pursuant to its authority under Sections 303(b), 303(c), 303(e), 303(f), 303(g), 303(h), 303(r), the Commission may establish that it shall henceforth only consider interference “harmful” and therefore prohibited under Section 309(h) where a receiver device meets specific criteria. Receiver manufacturers are, of course, free to manufacture substandard receivers. However, such interference shall not be considered harmful interference anymore than interference with reception outside a protected contour defined by the Commission is considered “harmful.” In doing so, the Commission would strike a balance between the operation of two primary services on competing bands – the remaining television service and whatever service is authorized on the neighboring spectrum. PK also noted that, pursuant to Section 304, broadcast licensees may not claim any settled expectation in the continuation of previous interference standards.

Receiver manufacturers, having taken the position that they lie outside the Commission’s jurisdiction, likewise have no claim to any protection under the Act. Under their own theory, receiver manufacturers are merely third party beneficiaries of the Commission’s regulation of the licensee.

In accordance with the FCC's *ex parte* rules, this document is being electronically filed in the above-referenced dockets today.

Sincerely,

_____/s/_____
Harold Feld
Legal Director
Public Knowledge

CC: Josh Cinelli
Amy Levine